

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 611 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

L I C OF INDIA

Versus

SHANTABEN WD/O HARGOVANDAS SHIVLAL PATEL

Appearance:

MR RK MISHRA for appellant

MR AD MITHANI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/09/98

ORAL JUDGMENT

#. This First Appeal is directed against the judgment and decree of the City Civil Court at Ahmedabad, Court No.17, Ahmedabad, decided on 31.12.79 under which the suit of the plaintiff-respondent for Rs.30,000/= with running interest at the rate of 6% from the date of the suit till realization has been decreed.

#. The facts of the case in brief are that the husband of the plaintiff-respondent No.1 and father of other respondents, late Hargovandas Shivilal Patel got himself insured under a policy of Life Insurance bearing No.15404359 issued by the defendant-appellant Life Insurance Corporation of India for a sum of Rs.30,000/=. Their proposal for assurance was given on 20th February 1971 which was accepted by the defendant-appellant. Mr.Hargovandas Shivilal Patel died on 3.12.72 when the policy was in force. The plaintiff-respondent No.1 was a nominee of the said policy and she prayed with the appellant for payment of the sum assured under the said policy but the defendant-appellant, under its letter dated 4.2.75 repudiated the claim of the plaintiff-respondents on the ground that the insured in the proposal form, signed by him, had given false averments to the question No.4(a), 4(d) and 7. The plaintiffs-respondents filed a civil suit for recovery of the sum insured in the civil court. The defendant-appellant contested the suit and the very defence on which the contract of insurance was repudiated has been taken in the written statement. Both the parties have adduced oral and documentary evidence. The details of oral and documentary evidence of the parties are as under:

#. Oral evidence of the plaintiff:

Smt.Shantaben, examined as ex.59.

#. Oral evidence of the defendant:

Dr.R.M.Kothari examined at ex.39, Dr.Anil Parikh examined at ex.48, Dr.B.M.Patel and Dr.J.M.Parikh at ex.44 and 46, Ramakant M. Patel, concerned insurance agent examined at ex.40, Somchand V. Shah examined at ex.43.

#. The documentary evidence consisted of the following documents:

Original insurance policy No.15404259 dated 22.4.71 at ex.36, proposal forms at ex.41 and 42, two confidential reports of medical examiners at ex.45 and 47, claim form at ex.39, death certificate of the deceased at ex.37, report of the investigating officer Mr.Purohit dated 12.12.71 at ex.39, letter dated 4.2.75 sent by defendant to the plaintiff No.1 repudiating her claim at ex.61. Two insurance policies of deceased at ex.53 and 56, xerox copies of proposal forms alongwith personal statement and medical report in respect of policy 15314295 at ex.54 and 55, xerox copy of proposal form alongwith personsl

statement and medical report of policy No.15232367 at ex.57, and letter dated 28.9.79 by defendant's advocate to the advocate of the plaintiffs at ex.58.

#. On the basis of pleadings of the parties, the learned trial Court framed as many as five issues in the suit which are as follows:

1. Whether the defendant proves that in view of the statements made in the documents referred to in paras-4A to 4C of the written statement would be null and void ?
2. Whether the defendant further proves that the deceased husband of the plaintiff acted fraudulently in giving answers as stated in para 4-C of the written statement ? If yes, what is its effect thereon the policy of insurance ?
3. Whether the plaintiffs prove that the defendant has wrongly and illegally repudiated the claim of the plaintiffs for the insurance amount ?
4. Whether the defendant is liable to pay the plaintiffs any amount in respect of the insurance policy No.15404359 ?
5. What decree and order ?

#. After discussing the evidence of the parties, the learned trial Court has decided issue No.1 in negative. The first part of issue No.2 was decided in negative and so far as second part is concerned, it is observed that it does not survive. Issue No.3 was decided in the affirmative. Issue No.4 was decided in the affirmative and under issue No.5, decree for Rs.30,000/= with interest has been granted.

#. The learned counsel for the appellant contended that it is a clear case where the insured has made false declaration in the proposal form regarding his ailment etc. and as such, the insurance company was within its competence to repudiate the contract. It has next been contended that these material particulars have deliberately not been disclosed by the insured though he was fully knowing the same and as it is a clear case of fraud, this contract otherwise also becomes void and unenforceable.

#. On the other hand, the learned counsel for the plaintiffs-respondents contended that the two doctors of

insurance company have examined the insured and both the proposal forms have been duly verified in which no serious ailment has been found in the insured. In the alternative, the learned counsel for the respondents contended that if we go by the ailment of the insured the same are of not such serious nature where non disclosing of the same in the proposal form render the contract of insurance to be void.

##. I have given my thoughtful considerations to the submissions made by learned counsel for the parties and gone through the judgment of the learned trial Court and record of the case.

##. Under question No.4(a), the insured had to reply regarding his usual state of health. This question was answered by him as 'good'. Under question No.4(d) he had to answer as to whether he consulted a medical practitioner within the last five years, and if so, the details thereof. This question has been replied as, 'no'. The question No.7 and its answer read as under:

Q.7. Have you ever passed blood, pus, albumen
or sugar in urine ?

A.7. No.

##. The learned counsel for the defendant-appellant admitted that from the record of this case, it only comes out against the deceased insured that in the year 1970 he remained as indoor patient for twelve days and was treated by Dr.R.M.Kothari at Ahmedabad for ulcer on foot. From 10.9.1969 to 10.10.1969, he was treated by Vaidya Chunilal Revashanker for Diabetes, Bone T.B. and lastly from 15.7.1970 to 18.7.1970 he was treated by Medical Officer, Primary Health Center, Dabhoda for foot ulcer.

##. From the aforesaid facts, I find that there is nothing serious and material ailment for which the insured has been treated by the doctors and has undergone the treatment. It would have been better and expectable from the insured to disclose all these facts in the proposal form but this Court cannot be oblivious of the fact that those proposal forms were also counter signed by the two doctors of the panel of the insurance company. I fail to see what for these doctors have been empaneled by the insurance company and in case they have not found any ailment of serious nature in the insured then only for non disclosing these facts, repudiation of the contract in the given facts of the case is not justified. It is a matter of fact on which there is no dispute that

the insured has died after more than one year ten months after the date of proposal of the assurance. The learned trial Court, after discussing evidence at length, has examined each and every aspect of the matter and the further fact that it cannot be said to be that much of serious concealment in the presence of evidence of the insurance agent and two of the doctors of the panel of the insurance company which justify repudiation of the contract of the insurance, it was perfectly correct to hold that the contract of insurance could not have been repudiated. The learned counsel for the appellant admits one more important position that the decretal amount has been paid long back to the plaintiffs-respondents. Looking to the facts of this case and the fact that the insurance proposal has been duly signed by the doctors on the panel of the insurance company and those doctors have not found any serious ailment of the insured which justified non acceptance of the proposal, no interference is called for in this Appeal and the same is dismissed with no order as to costs.

.....

(sunil)